Office of the City Clerk

The City of Morgantown

Linda L. Tucker, CMC
389 Spruce Street, Room 10
Morgantown, West Virginia 26505
(304) 284-7439 Fax: (304) 284-7525
llittle@cityofmorgantown.org

AGENDA
MORGANTOWN CITY COUNCIL
REGULAR MEETING
JANUARY 6, 2015
7:00 p.m.

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **PLEDGE TO THE FLAG**

4. **APPROVAL OF MINUTES:** **Minutes are being transcribed. (12-2, 12-9 & 12-16)**

5. **CORRESPONDENCE**

6. **PUBLIC HEARINGS:**

   A. **AN ORDINANCE AUTHORIZING THE CITY OF MORGANTOWN TO ENTER INTO AN AGREEMENT TO AMEND A PRIOR AGREEMENT WITH THE MONONGALIA COUNTY COMMISSION REGARDING SHARED COSTS OF THE LOCAL REGIONAL JAIL PROCESSING CENTER AND TRANSPORTATION SERVICES.**

7. **UNFINISHED BUSINESS:**

   A. **Consideration** of **APPROVAL** of **(SECOND READING)** and **(ADOPTION)** of **AN ORDINANCE AUTHORIZING THE CITY OF MORGANTOWN TO ENTER INTO AN AGREEMENT TO AMEND A PRIOR AGREEMENT WITH THE MONONGALIA COUNTY COMMISSION REGARDING SHARED COSTS OF THE LOCAL REGIONAL JAIL PROCESSING CENTER AND TRANSPORTATION SERVICES. (First Reading December 16, 2014)**

   B. **BOARDS AND COMMISSIONS**

8. **PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION**

9. **SPECIAL COMMITTEE REPORTS**

10. **NEW BUSINESS:**

A. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF CERTAIN REALTY IN THE THIRD WARD OF THE CITY OF MORGANTOWN FROM (PUD) PLANNED UNIT DEVELOPMENT TO (R-2) SINGLE- AND TWO-FAMILY RESIDENTIAL DISTRICT THEREBY RESCINDING A PORTION OF THE "SQUARE AT FALLING RUN PLANNED UNIT DEVELOPMENT" BY AMENDING ARTICLE 1331 OF THE PLANNING & ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.**

B. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AMENDING ARTICLE 1385.08 OF THE PLANNING AND ZONING CODE AS IT RELATES TO PLANNING COMMISSION REVIEW OF SITE PLANS AND WEST VIRGINIA DIVISION OF HIGHWAYS ACCESS PERMITTING.**

C. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE AMENDING ARTICLE 1393 OF THE PLANNING AND ZONING CODE AS IT RELATES TO VIOLATIONS AND ENFORCEMENT.**

D. Consideration of **APPROVAL** of **FIRST READING** of **AN ORDINANCE PROVIDING FOR LEASING TO RSA FLIGHT TRAINING, LLC, LESSEE, BY THE CITY OF MORGANTOWN, LESSOR, A CERTAIN AREA AT THE MORGANTOWN MUNICIPAL AIRPORT AND DECLARING THE LEASE AND MEMORANDUM OF LEASE HERETO ATTACHED AS PART THEREOF.**

11. **CITY MANAGER'S REPORT:**

INFORMATION:

1. **Home Rule**

2. **Right-of-way Permits**

12. **REPORT FROM CITY CLERK**

13. **REPORT FROM CITY ATTORNEY**

14. **REPORT FROM COUNCIL MEMBERS**

15. **EXECUTIVE SESSION: Pursuant to West Virginia Code Section 6-9A-4(b)(9) of the West Virginia code to consider matters involving Attorney/Client privileges.**

16. **ADJOURNMENT**

If you need an accommodation contact us at (304) 284-7439

Office of the City Manager

The City of Morgantown

City Manager
Jeff Mikorski, ICMA-CM
389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7405 FAX: (304) 284-7430
www.morgantownwv.gov

City Manager's Report for City Council Meeting on January 6, 2015

Information :

1. **Home Rule**
   The State Home Rule Oversight Board cancelled their January 6, 2015 meeting. The two proposed City of Morgantown ordinances will be presented at their next meeting which will be on Monday, March 2, 2015 at 9:00 a.m. in the Morgantown Public Safety Building Training Room.

2. **Right-of-way Permits**
   Anyone impacting the public right-of-way, including a sidewalk or a street for any length of time, must get a right-of-way permit from the City of Morgantown Engineering Department. In an effort to provide information to residents and businesses on scheduled interruptions of the public right-of-way that may affect their property, the City will begin posting all right-of-way permits on the City's web page and identify ways to notify affected properties prior to the disturbance. As the number of right-of-way disturbances increase, they are impacting other residents and businesses adjacent to disturbance. It is only fair that property owners know in advance that a permit has been approved for the right-of-way to be impacted in their area.

Jeff Mikorski ICMA-CM,
Morgantown City Manager

BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES

FIRE CIVIL SERVICE:

Dan Hursh e-mailed that he must resign due to personal reasons. We are looking for a new Commissioner administratively. This is a City Manager appointment.

URBAN LANDSCAPE:

Nicole Panaccione, Fourth Ward resigned on 7/1/2014. Councilor Selin is looking for a replacement for that position on that commission. Nominated by CM, one from each WD, 13 members with staggered terms and I Councilor.

***POLICE & FIRE CIVIL SERVICE COMMISSIONS:** NEW PRESIDENTS APPOINTED IN JANUARY.

Information for Boards and Commissions vacancies are placed in the Dominion Post, are advertised on the City's Government Station Channel 15, and are posted at the Library and also information is on the City's Web Page.
Council decided on 3-21-06 by unanimous consent that if there is only one candidate for Boards & Commissions, that they will not interview; the City Clerk will check with Council before scheduling a Special Meeting.
BZA and Planning Commission term expirations are advertised in October and interviews must be completed by December per State Law.

12/17/14

AN ORDINANCE AUTHORIZING THE CITY OF MORGANTOWN TO ENTER INTO AN AGREEMENT TO AMEND A PRIOR AGREEMENT WITH THE MONONGALIA COUNTY COMMISSION REGARDING SHARED COSTS OF THE LOCAL REGIONAL JAIL PROCESSING CENTER AND TRANSPORTATION SERVICES.

The City of Morgantown hereby ordains that its City Manager is authorized to execute, by and on behalf of the City of Morgantown, the attached "Cooperative Agreement for Operation of Processing/Transport Center," which is made a part of this ordinance.

First Reading:

Adopted:

_____
Mayor

Filed:

Recorded:

_____
City Clerk

MONONGALIA COUNTY COMMISSION

243 HIGH STREET, ROOM 202
COURTHOUSE
MORGANTOWN, WEST VIRGINIA 26505

L.W. "Bill" Bartolo, Commissioner
Eldon A. Callen, Commissioner
Tom Bloom, Commissioner

Telephone: 304 291-7257

Cooperative Agreement For Operation of Processing/Transport Center

ADDENDUM to Memorandum of Understanding by and between the Town of Granville, City of Morgantown, Town of Star City, City of Westover, West Virginia State Police (Exempt), West Virginia University Police and the Monongalia County Commission.

With the rising cost of operating expenses, the Monongalia County Commission is requesting the above named participants accept a portion of the financial responsibility for transporting arrestees to the North Central Regional Jail by the Monongalia County Sheriff's Department staff at the rate of $35.00 per trip (whether one or several at a time).

The entity would be billed monthly based upon the number of actual trips made.

The fee has been determined by calculating the cost of two employees per trip, use of the county-owned vehicle (replacement approximately every two years), and fuel to make the 138 mile round trip. Average cost per trip or $115.00 with three persons generally being transported at one time, or $38.33 per person. $35.00 per trip is being requested.

All other items being a part of the original "Cooperative Agreement For Operation of Processing/Transport Center" and the "Amended Memorandum of Understanding" shall remain in effect.

By signing this ADDENDUM to the Amended Memorandum of Understanding, each participating agency agrees to abide by all procedures set forth by this Commission and the Sheriff of Monongalia County to ensure continued service to the NCRJ.

Accepted by: _____ Town of Granville

_____ City of Morgantown

_____ Town of Star City

	_____	City of Westover
	_____	West Virginia University
With:	_____	L. W. Bartolo
	_____	Eldon A. Callen
	_____	Tom Bloom
	Monongalia County Commission	
Dated:	December 3, 2014	

Cc: Allen Kisner,
Monongalia County Sheriff and Treasurer

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE ZONING RECLASSIFICATION OF CERTAIN REALTY IN THE THIRD WARD OF THE CITY OF MORGANTOWN FROM (PUD) PLANNED UNIT DEVELOPMENT TO (R-2) SINGLE- AND TWO-FAMILY RESIDENTIAL DISTRICT THEREBY RESCINDING A PORTION OF THE "SQUARE AT FALLING RUN PLANNED UNIT DEVELOPMENT" BY AMENDING ARTICLE 1331 OF THE PLANNING & ZONING CODE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH HEREIN.

WHEREAS, the City of Morgantown adopted Ordinance 03-19 on May 6, 2003 to amend the Official Zoning Map of the City of Morgantown thereby creating the "Square at Falling Run Planned Unit Development" zoning district.

WHEREAS, Ordinance 03-19 provided for the zoning reclassification of 101 parcels that initially comprised the "Square at Falling Run Planned Unit Development" zoning district.

WHEREAS, of those 101 parcels, Ordinance 03-19 provided for the zoning reclassification of properties identified in the 2000 Assessor's records as Parcels 231, 232, 233, and 237, of County Tax Map 20, Morgantown Corporation District from (R-2) Single- and Two-Family Residential District to (PUD) Planned Unit Development District.

WHEREAS, Article 1357.02(A) of the City's Planning & Zoning Code requires that the area designated in a Planned Unit Development must be under single ownership or control unless multiple owners are co-applicants for the Planned Unit Development designation.

WHEREAS, the owners of Parcels 231, 232, 233, and 237 of County Tax Map 20 at the time of enactment of Ordinance 03-19 no longer own or control said realty.

WHEREAS, the current owner of Parcels 231, 232, 233, and 237 of County Tax Map 20 was not a co-applicant for the "Square at Falling Run Planned Unit Development" at the time of enactment of Ordinance 03-19.

WHEREAS, Article 1357.03(D)(4)(c) provides that the Planning Commission shall determine whether to initiate action to amend the Official Zoning Map so as to rescind a Planned Unit Development.

WHEREAS, the Morgantown Planning Commission held a public hearing on December 11, 2014 and voted favorably to initiate action to amend the Official Zoning Map so as to rescind that portion of the "Square at Falling Run Planned Unit Development" that includes of Parcels 231, 232, 233, and 237 of County Tax Map 20.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF MORGANTOWN:

1. That the following portion of Ordinance 03-19 is hereby amended as follows (deleted matter struck through):

   Properties included in this consideration are identified in the 2000 Assessors records as Parcels # ~~231, 232, 233, 237,~~ the southern parts of 391 and 392 (resubdivided at March 2003 Planning Commission meeting), 393, 394, 395, 396, 397, 398, 400, 402, 403, 404, 404.1, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 419, 420, 421, 422, 423, 424, 425, 426.1, 462, 462.1, 490, 491, 492, 501, 506, 507, 508, 509, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537.01, 538, 539, 540, 541, 542, 543, 544, 545, 545.1, 545.02, 546, 547, 548, 549, 555, 556, 557, 558, 559, 578, of County Tax Map 20.

   Other properties includes in this consideration are identified in the 2000 Assessors records as Parcels # 12, 16, 23, 24, 38, 39, 56, 57 of County Tax Map 21.

2. That the zoning reclassification from (R-2), Single- and Two-Family Residential District to (PUD), Planned Unit Development for Parcels 231, 232, 233, and 237 of County Tax Map 20 provided in Ordinance 03-19 is hereby rescinded;

3. That Parcels 231, 232, 233, and 237 of County Tax Map 20 as described herein and illustrated on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same was fully set forth herein are hereby reclassified from (PUD), Planned Unit Development to (R-2), Single- and Two-Family Residential District; and,

4. That the Official Zoning Map be accordingly changed to show said zoning reclassification.

This Ordinance shall be effective from date of adoption.

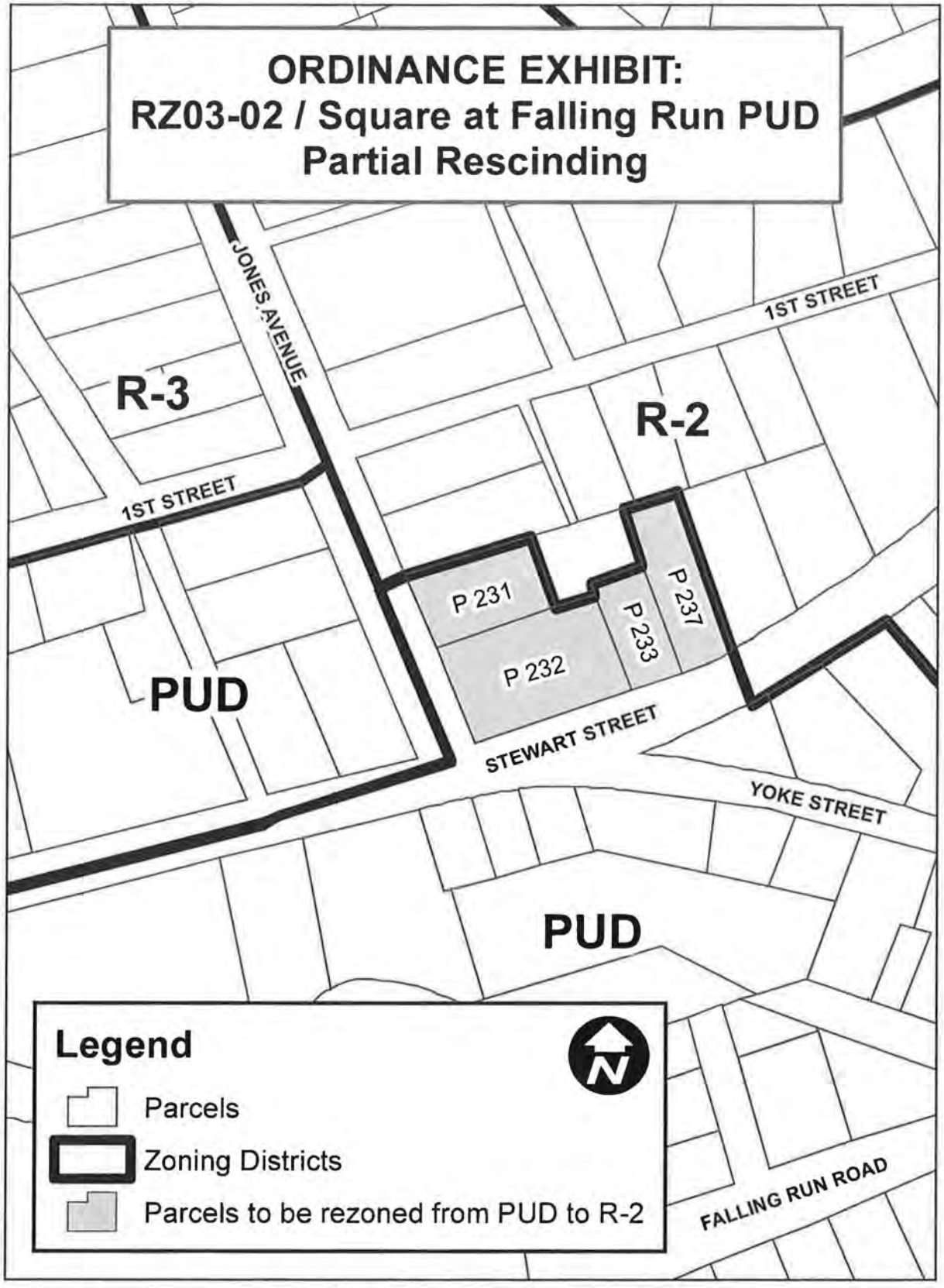
FIRST READING:

_____
Mayor

ADOPTED:

FILED:

_____
RECORDED: City Clerk



Prepared by the Development Services Department (20141217)

MORGANTOWN PLANNING COMMISSION

December 11, 2014
6:30 PM
City Council Chambers

Development Services Department
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

STAFF REPORT

CASE NO: RZ03-02/ Administrative / Square at Falling Run Planned Unit Development (PUD)

REQUEST and LOCATION:

Administrative recommendation to the Planning Commission to rescind a portion of the Square at Falling Run Planned Unit Development (PUD) District classification and return certain properties to the previous R-2, Single- and Two-Family Residential District zoning classification; Tax Map 20, Parcels 231, 232, 233, and 237.

BACKGROUND:

On 13 MAR 2003, the Planning Commission sent a recommendation to City Council to approve the Square at Falling Run Planned Unit Development (SFR PUD). City Council agreed and amended to the Zoning Map to create the City's first Planned Unit Development. Attached hereto are the following related exhibits.

- Exhibit 1 – A portion of the Zoning Map in affect in March 2003.
- Exhibit 2 – Staff Report presented to the Planning Commission on 13 MAR 2003.
- Exhibit 3 – City Council Ordinance 03-19

The SFR PUD comprised approximately 30 acres that included 101 parcels of real estate. Some of the statements included in the Exhibit 2 Staff Report included:

> *"This project represents the first proposal in the State of West Virginia to incorporate a variety of Smart Growth / New Urbanist principles."*
>
> *"If you place the SFR into its proper context, it can be fairly stated that it represents the most significant urban revitalization project ever proposed in the State of West Virginia."*
>
> *"The vision is both bold and audacious, qualities that may be admired, not feared. If implemented, it can serve as an important catalyst in the renaissance of the Sunnyside neighborhood."*

Over the years that followed SFR PUD Outline Plan approval, the developer, the City, and West Virginia University met with a number of investors to bring the developer's vision into reality. A Tax Increment Financing District was created; a number of dilapidated structures within the old "Stadium Loop" were razed and removed; underground infrastructure was improved and capacity expanded; roadway realignment and widening completed; and, a significantly modified Phase I "The Augusta" constructed.

The national recession started in late 2007, which impeded access to residential development capital across the country. The SFR developers filed bankruptcy in 2009 and creditors initiated legal action in 2010 for nonpayment of 2006 construction loan. West Virginia University purchased "The Augusta" portion of the SFR PUD in 2011 out of

bankruptcy proceedings and renamed the two buildings "Vandalia Apartments." In 2012, the University acquired the remaining privately owned land within the SFR PUD out of bankruptcy proceedings and the City transferred its property within the old "Stadium Loop" back to the University, which was acquired through West Virginia economic development funding.

ANALYSIS:

Article 1357.02(A) of the Planning and Zoning Code requires an area to be designated as a Planned Unit Development Districts to be land under single ownership or control. The ownership of the land that comprises SFR PUD has since changed.

Article 1357.03(D)(4)(c) provides the Planning Commission shall initiate action to amend the Zoning Map so as to rescind the Planning Unit Development designation when the time limit for approval of a development plan expires.

The 2013 Comprehensive Plan Update provides the following regulatory Land Management Strategy relating to the zoning classification of West Virginia University realty.

> LM 7.1 – Develop a new zoning district to be applied to property owned by WVU and considered a part of WVU's main campuses to provide a more fair and predictable regulation of university-related development.

The Planning Division will be initiating Land Management Strategy 7.1 in early 2015. However, it has come to the attention of Staff that a small portion of the SFR PUD has been sold by the University to a private land owner. As such, it appears necessary to rescind that portion of the SFR PUD to its previous R-2 Single- and Two-Family Residential District in the near term.

The following map illustrates Parcels 231, 232, 233, and 237 of Tax Map 20 that are privately owned (not owned by WVU) within the SFR PUD District.

Development Services Department
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

The following graphic is clipped from the Land Management Map of the 2013 Comprehensive Plan Update (Page 39), which identifies the subject property as "Neighborhood Revitalization."

The "Neighborhood Revitalization" designation provide for areas within which stabilization and reinvestment in existing neighborhoods are envisioned that includes improvements to public and private buildings and infrastructure, and support for infill development , adaptive reuse and redevelopment that offers a mix of residential types and supporting uses.

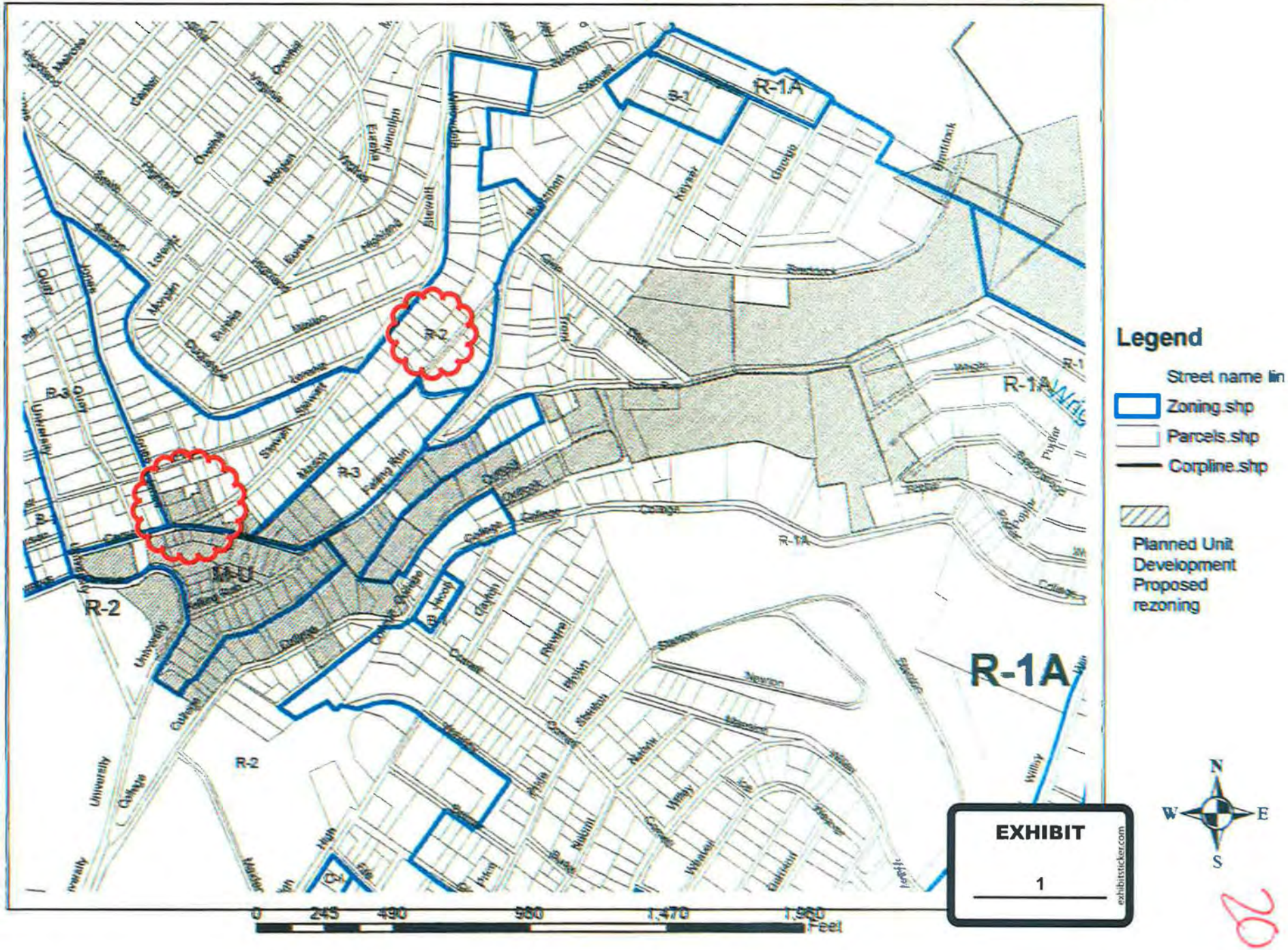
STAFF RECOMMENDATION:

Staff advises the Planning Commission to submit a recommendation to City Council to rescind the Planned Unit Development District designation for Parcels 231, 232, 233, and 237 of Tax Map 20 and reclassify said realty to its former R-2, Single- and Two-Family Residential District designation.

Development Services Department
Christopher Fletcher, AICP
Director

Planning Division
389 Spruce Street
Morgantown, WV 26505
304.284.7431

RZ03-02 / The Square at Falling Run



20

STAFF REPORT

Planning Commission
March 13, 2003
City Council
Date to be announced

RZ03-02 / Warner /Square at Falling Run

REQUEST and LOCATION:
Request by Mac Warner to rezone approximately 30 acres of land more or less bounded by Stewart Street, Braddock Street and Mason Street on the North, College Avenue and Falling Run Road on the South, University Avenue on the West, and Monroe Avenue on the East, from R-1A, Single Family Residential District; R-2, Single and Two Family Residential District; R-3, multi-family residential district, and MU, Mixed Use district, to Planned Unit Development (PUD) district.

TAX MAP NUMBER (s) and ZONING DESCRIPTION:
The properties encompass multiple parcels, with R-1A, R-2, R-3 and M-U zoning classifications.

SURROUNDING ZONING:
North: R-2, R-3, and R-1A
South and East: R-2, R-1A
West: R-2

BACKGROUND and ANALYSIS:
Mac Warner and John Stainback have made an application for a zoning map amendment to rezone approximately 30 acres of land in the Falling Run Road area from a variety of existing zoning classifications to Planned Unit Development (PUD).

This project represents the first proposal in the state of West Virginia that incorporates a variety of Smart Growth / New Urbanist principles. Those principles include:

1. Neighborhoods should have a discernible center (the town square in this case).
2. Most of the dwellings are within a five-minute walk of the center.
3. There is a variety of housing types.
4. There are recreational amenities within easy walking distance of every dwelling.
5. Streets within the neighborhood form a connected network, with few or no dead end streets.
6. Streets are designed to accommodate, but not be dominated by, the automobile.
7. Buildings in the neighborhood center are placed close to the street to provide enclosure.
8. Land uses are mixed.
9. Parking lots and garage doors rarely enfront streets.
10. Vistas are often terminated with important buildings or civic features.

The proposed PUD is divided into three phases, as follows:

Phase I:
The first phase of the project involves construction of a 15-story apartment building (named *The Augusta)* containing a total of 176 dwelling units of various sizes, from 1 to 4 bedrooms each. The building is proposed to be constructed at the corner of Yoke street and Falling Run Road. The architectural renderings in your

packets show what the building is proposed to look like. Keep in mind that with a Planned Unit Development, the city can require buildings to be constructed as shown in the master plan submission.

The applicant proposes to provide temporary parking for the building in a series of surface lots to be constructed on the sites of rental homes that will be demolished in association with the project. This temporary parking will be kept in place until such time as the parking garage proposed for Phase II is completed. If Phase II does not proceed, the developer will have to upgrade the temporary lots into permanent parking spaces, in the amount of 305 stalls, with landscaping and paving.

It is expected that several existing rental units will be demolished in association with this phase. They include all units that are currently sitting on the actual site where the Augusta will be constructed, some units in the staging area where construction equipment and materials will be stored during construction, and some units where there will be temporary parking for construction workers. Approximately three months before the building is scheduled for completion, any existing unit sitting on land where the temporary surface parking lots are to be created will also be removed.

Phase II:
This phase represents the actual and symbolic heart of the project, the town square. Several things are slated to happen in this phase. There is proposed to be 100,000 square feet of retail and restaurant space in buildings that are flanking the square, in addition to 275,000 square feet of office space. There will also be 142 apartment units over top of the storefronts, a church, and an additional residential building with 190 midrise apartments. There is also proposed to be a five-screen Cineplex at the back of this phase. Finally, an underground parking garage will be constructed beneath the plaza, holding approximately 1686 cars. There will be 40 surface parking stalls in the plaza itself, for a total parking program of 1726 stalls for phases I and II.

The vast majority of the road improvements will occur during this phase. See the section about road / intersection improvements for further analysis of this aspect of the development.

Phase III.
Extending up the Falling Run valley, Phase III is conceived as a residential neighborhood containing predominantly detached single-family, for-sale houses. This phase will interface with some existing single-family neighborhoods, so it is important to establish the character of the homes.

It is anticipated that this phase will contain approximately 392 for-sale units. About 109 of these may be in the form of townhouses placed at the lower end of the phase, where it interfaces with Phase II. The neighborhoods surrounding this lower part are not predominantly single-family. The remaining 283 units are scheduled to be single-family detached homes designed to attract faculty, staff and young professionals.

It should be noted that Phase III is several years away, and my experience with other Planned Unit Developments in other states has been that later phases are almost *always* redesigned, sometimes 3 or 4 times, as market conditions change and uncertainties present themselves or work themselves out. So we have to be prepared to accept a certain level of ambiguity in terms of the design of phase III. What is reasonable to expect is that we set forth some conceptual guidelines that will adhere to the phase and direct any future redesigns. This expectation has been met as follows:

1. The phase will consist of for sale single-family homes and townhouses.
2. The total unit count will be approximately 400, plus or minus.
3. Design guidelines for the single-family portion have been submitted that will insure functional, harmonious, and architecturally pleasing residential blocks. These are detailed in Section 9 of the three-ring binder.

character and human scale. The street improvements that are recommended do in fact attempt to strike that balance. They are not as intensive as they could have been if the only goal was to move huge volumes of cars. But they should be sufficient to at least preserve, and in many cases, improve, existing levels of service.

3. Widening of Yoke Street. This street is very narrow and insufficient to carry any significant traffic. This will be widened to a width acceptable to our Engineering and Fire Departments, to be decided in the Development Plan phase of the PUD.
4. Turning and stacking lanes at the University Avenue / Stewart Street intersection.
5. Multi-modal options including extension of the Rail Trail through the project, bicycle lanes, a bus stop for Mountain Line, etc. This, combined with the close proximity of differing land uses, will enable folks to choose other transportation options besides a car.

In terms of the traffic study, the city has contracted Dr. Ron Eck and Dr. Jim French of West Virginia University to review the study. They each have extensive experience in producing and reviewing traffic analyses. The review has led to several questions and suggestions by Dr. French relating to intersection design, traffic counts, trip generation percentages, and other highly technical issues. These concerns have been relayed to Greenhorne and O'Mara's engineers. We have asked them to be fully prepared to respond to all the concerns before the PUD is considered by City Council. It is fair to say that Drs. Eck and French are cautiously optimistic that these issues can be resolved with further analysis, but they will withhold their final recommendation to Council until that happens. If Drs. Eck and French are ultimately *not* satisfied with the methodological validity and conclusions of the traffic study, that should stand as an obstacle to favorable consideration of the entire project.

A significant portion of the infrastructure for this project, including road and intersection improvements, construction of the parking garage, etc. is proposed to be financed using tax increment financing (TIF) bonds. In rudimentary terms, a TIF works by comparing the current property tax receipts for the land versus estimated future tax receipts after the project is finished, and then selling bonds in the amount of the difference, to help construct the project. The money can be used in a variety of ways, and can fund public or private improvements.

PUD Process:
Some commentary about the PUD process is in order… A project of this size and magnitude obviously requires a lot of very expensive analysis by professionals in a variety of disciplines, including structural engineering, civil engineering, architecture, landscape architecture, traffic engineering, etc. It would not be uncommon for these services to cost hundreds of thousands of dollars for a project of this scope.

The PUD process is conceived, much like other cities, to consist of three parts. The first part is the preliminary consultations with staff. The second part is called the concept plan phase, which is what we are currently undergoing. In this phase the developer sets forth a grand "vision" or master plan for how the project will evolve. A significant amount of planning is necessary during this phase, so that we can get a feel for the overall character of the development, how it interfaces with its spatial context, the types of and intensities of land uses, the amenities being offered, how the project will affect transportation patterns in the area, and some general rules for how the buildings will look and how they will be arranged.

Equally important is what is NOT required during this phase… Such things as detailed engineering studies of storm water control, utility services, detailed engineering drawings of road improvements, detailed building plans, etc. are NOT required at this stage of the process. It is simply unreasonable to expect anyone to spend the enormous sums of money it would take to dot every "i" and cross every "t" at this point, on the ***hope*** that Council will rezone the property to allow the development to proceed. During the concept plan phase, Council should simply decide if they buy into the "vision" being presented, based on the reasonable levels of supporting data required. If the answer is yes, then Council at this stage is merely rezoning the property to PUD, in order for the detailed analysis to go forward. All that has happened is the property zoning has changed.

4. Due to the smaller lot sizes in this phase, it should be possible to offer these units at a lower cost than other market-rate single-family detached housing in the region. This has the potential to address affordability within the project.

Finally, it is important to note that this phase has already been reconceived a couple of times, based on the developer's willingness to accommodate the expressed concerns of the public. It is to their credit that they attempted to address these concerns on the front end… Early iterations of drawings indicated a significant number of apartment and townhouse units, with no detached single-family homes. Based on the comments of concerned residents and some City Council members, this phase has been dramatically reconfigured to entirely eliminate apartment buildings, reduce the number of townhouses, and introduce a large single-family detached housing component. Consequently, the overall unit numbers have been reduced from approximately 544 to 392 units.

Even at this late date, your packet shows an earlier generation conceptual drawing of phase III, still showing some multi-family apartments. This is true because as late as last week, the developer was revising the concept to eliminate the apartments and to address other concerns, at the behest of the city. This request was accommodated, but there was insufficient time to produce a replacement drawing for your packets. That will be produced before the case comes to City Council. The developer should not be penalized for late revisions requested by the City.

This fact has affected the projects' underlying financial model, to the extent that the developer would like to make up the loss of *some* of these units (51 total) by adding them back into phase II. We are inclined to grant this concession, but it is too late at this stage of the process to redesign phase II to show *how* those units would be added. We would need to know how adding these units would affect parking, green space, the architectural character of the phase, etc. Without a clear design, we can only simply *note* that we may be receptive to increasing the unit count in phase II, subject to a later master plan amendment detailing exactly how this will be done. Note that all such significant master plan amendments require additional public hearings in front of both the Planning Commission and City Council.

Transportation Systems:
There are several important things to note about the existing transportation system and how this project will integrate with it:

First, the PUD ordinance requires a traffic impact study to be submitted in the master plan phase. The developers used Greenhorne and O'Mara, Inc., a professional consulting firm with a regional office in Fairmont. The study examined the existing traffic situation and then tried to model how SFR would affect traffic. From the study it became clear that several road and/or intersection improvements would be necessary in order to mitigate potential traffic impacts. They include, but may not necessarily be limited to, the following:

1. Extension of Falling Run Road from its current termination point, out to the Mileground. The road will cross property owned by WVU (the ag. farm). This improvement is critical, in order to provide a back way in and out of the project. It is proposed that an extension of the Rail Trail will follow this road for its entire length, giving residents of phase III and surrounding neighborhoods bicycle and pedestrian access into the Town Square and WVU's downtown campus.
2. Straightening of University Avenue at the old stadium loop. This, like the previous improvement, is contingent on some land transactions with WVU. The negotiations for those transactions are ongoing, and acceptable progress is being made to those ends. The roadbed will also be elevated to allow the construction of the two-level parking garage underneath the square. Turning lanes will be added at key intersections to help traffic flow more efficiently through and within the system. It is important to note that the whole perspective of new urbanist thinking is to find a reasonable compromise between the competing goals of moving large numbers of cars quickly through a street system, and the goal of having a pedestrian friendly street network that preserves neighborhood

Now we get to stage 3, the *development plan* phase. In this phase, the developer has the confidence to go forward with detailed analysis of the project, knowing that the zoning is in place. Here is where construction plans are produced, drainage calculations are provided, detailed engineering analyses of infrastructure improvements are done, etc. In essence, we are telling the developer – "We have bought into the vision set forth in the *concept plan* stage, so now you get to PROVE to us that it is implementable."

Staff will compare the development plans to be sure they are in accord with the concept plan, in terms of densities, architectural styles, land uses, etc. If the development plans substantially comply with the master plan, then building permits may be issued at the end of the review. If however the plans are substantially *different* from what was proposed in the concept plan, then the City has the power to require that the developer first seek an amendment to the concept plan, a process that is fully vetted by the Planning Commission and City Council, with the usual opportunities for public participation. We would be very surprised if a project of this magnitude, stretched out over a number of years, did not require at least a couple of concept plan amendments. If the concept plan ultimately does not work and cannot be satisfactorily amended, then the city will simply initiate a rezoning of the property back to its original designation.

The PUD ordinance gives the Planning Commission the discretion to review (or not to review) the development plans for any phase of the project. Because phase 1 consists of only a single building, the Commission is inclined to allow development plan review for this phase to occur at staff level. However, the Commission has made it clear they reserve the right to review phases 2 and 3 when the time comes.

- The reason we are going into such detail about the PUD process is because of some misconceptions about it that have come to our attention. You may hear many legitimate questions about whether certain aspects of the development can be implemented. In a large majority of these cases the answers are, *by design,* unknowable in the concept plan stage. Rather, they will have to be worked out during the *development plan* phase. You may very well be asked to reject this *concept plan* based on questions that should be properly resolved in the *next* phase of the process. Staff believes you should resist the temptation to do so. It would be unfair to judge the concept plan on questions that can only be answered during the development plan stage. To do so would run contrary to the process established by Council for PUD submittals.

STAFF RECOMMENDATION:

Daniel Burnham, recognized as the "father" of City Planning, once said "*Make no little plans, for they have no magic to stir men's blood.*" If you place the Square at Falling Run into its proper context, it can be fairly stated that it represents the most significant urban revitalization project ever proposed in the state of West Virginia. The vision is both bold and audacious, qualities that may be admired, not feared. If implemented, it can serve as an important catalyst in the renaissance of the Sunnyside neighborhood. Earlier iterations of this vision were less sensitive to the neighborhood and were thus vastly inferior. It is to the developer's credit that he was willing to abandon those earlier visions for this superior one.

City Council should evaluate the Square at Falling Run project on the quality of its overall vision. Again, the city is simply being asked to rezone property at this stage, based on this vision. If the property is rezoned, the developer can proceed with the development plan stage of the process, where it may be argued that the hard work only just begins.

Staff congratulates the developer for engaging in a very "open" planning process over the past several months. As should be the case, there have been numerous opportunities for public involvement in developing the vision for this site. There have been several changes to the concept plan that were based on that input. No other rezoning case in the city has provided such opportunities for public involvement and such accommodation to expressed concerns.

The Planning Commission, by a unanimous vote, recommends approval of the *concept plan*, subject to the following conditions:

1. All property transfers currently under negotiation with WVU come to fruition before the *development plan* is submitted for any phase where such properties are integral to the plan.
2. Drs. Eck and French's questions and concerns with the traffic impact study are resolved prior to Council adoption of the rezoning.
3. It is understood that Phase III will not be approved in the current form shown on the conceptual site drawings, but rather that it will be modified according to the principles set forth on pages 2 and 3 of this report, and that such modifications will be submitted either prior to Council consideration of the rezoning, or in the form of a concept plan amendment at a later time.
4. All utilities serving the project be underground, wherever technically feasible.

ORD 03-19

AN ORDINANCE PROVIDING FOR THE REZONING OF 101 PARCELS OF REAL ESTATE IN THE THIRD AND FIFTH WARDS OF THE CITY OF MORGANTOWN FROM (R-1A) SINGLE FAMILY RESIDENTIAL DISTRICT, (R-2) SINGLE AND TWO FAMILY RESIDENTIAL DISTRICT, (R-3) MULTIFAMILY RESIDENTIAL DISTRICT, AND (MU) MIXED USE DISTRICT TO (PUD) PLANNED UNIT DEVELOPMENT DISTRICT BY AMENDING SECTION 13 OF THE ZONING ORDINANCE OF THE CITY OF MORGANTOWN AS SHOWN ON THE EXHIBIT HERETO ATTACHED AND DECLARED TO BE A PART OF THIS ORDINANCE AS IF THE SAME WAS FULLY SET FORTH THEREIN.

Properties included in this consideration are identified in the 2000 Assessors records as Parcels # 231, 232, 233, 237, the southern parts of 391 and 392 (resubdivided at March 2003 Planning Commission meeting), 393, 394, 395, 396, 397, 398, 400, 402, 403, 404, 404.1, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 419, 420, 421, 422, 423, 424, 425, 426.1, 462, 462.1, 490, 491, 492, 501, 506, 507, 508, 509, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537.01, 538, 539, 540, 541, 542, 543, 544, 545, 545.1, 545.02, 546, 547, 548, 549, 555, 556, 557, 558, 559, 578, of County Tax Map 20.

Other properties included in this consideration are identified in the 2000 Assessors records as Parcels # 12, 16, 23, 24, 38, 39, 56, 57 of County Tax Map 21.

THE CITY OF MORGANTOWN HEREBY ORDAINS:

1. That the parcels listed above on County Tax Maps 20 and 21 of the 2000 tax assessment as described herein and on the exhibit hereto attached and declared to be a part of this Ordinance to be read herewith as if the same was fully set forth herein are rezoned from (R-1A) Single Family Residential District, R-2 Single and Two Family Residential District, R-3 Multi Family Residential District, and MU Mixed Use District to (PUD) Planned Unit Development District Classification.

2. That the zoning map be accordingly changed to show said zoning.

This ordinance shall be effective from date of adoption.

FIRST READING: April 1, 2003

ADOPTED: May 6, 2003

FILED: May 7, 2003

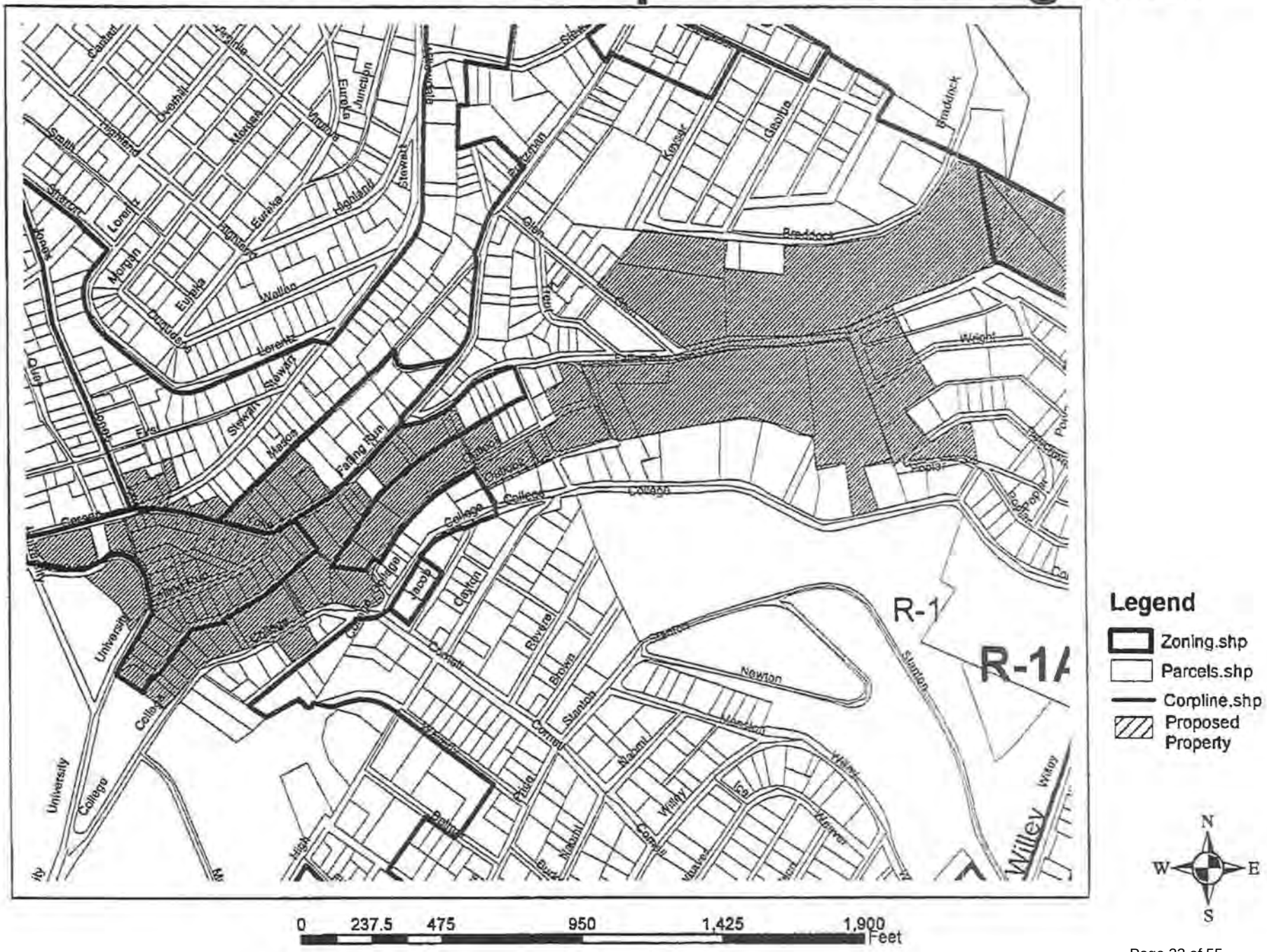
RECORDED: May 7, 2003

Ronald Justice
Mayor

Linda L Little
City Clerk

EXHIBIT
3
exhibitsticker.com

RZ03-02 / The Square at Falling Run



ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE 1385.08 OF THE PLANNING AND ZONING CODE AS IT RELATES TO PLANNING COMMISSION REVIEW OF SITE PLANS AND WEST VIRGINIA DIVISION OF HIGHWAYS ACCESS PERMITTING.

The Morgantown City Council hereby ordains that Article 1385.08(A)(1)(g) "Type III: Planning Commission Review of Developments of Significant Impact and Major Developments of Significant Impact" of the City's Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):

1385.08 TYPE III: PLANNING COMMISSION REVIEW OF DEVELOPMENTS OF SIGNIFICANT IMPACT AND MAJOR DEVELOPMENTS OF SIGNIFICANT IMPACT.

(A) Developments of Significant Impact are those that have a Citywide impact. Such impacts would typically involve the transportation network, environmental features such as parks or stream corridor, and local schools.

(1) All applications for a Development of Significant Impact shall be accompanied by the following:

(a) A site plan (14 copies), drawn to scale, that includes the following for the use of the Planning Director:

(i) The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a licensed land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant;

(ii) The exact sizes and locations on the lot of existing structures, if any;

(iii) The location(s), square footage(s), and dimensions of all proposed principal, accessory, and/or temporary structure(s) and/or alteration(s);

(iv) The location of the lot with respect to adjacent rights-of-way;

(v) The existing and proposed uses of the structure(s) and land;

(vi) The number of employees, families, housekeeping units, bedrooms, or rental units the structure(s) is designed to accommodate;

(vii) The location and dimensions of off-street parking and means of ingress and egress for such space;

(viii) Height of all structure(s);

(ix) The clear zone for structures similar to silos, grain bins, windmills, chimneys, stacks, spires, flag pole, skylights, derricks, conveyors, cooling towers, observation towers, water tanks, telecommunication facilities, etc. in excess of fifty (50) feet in height;

(x) Setbacks;

(xi) Buffer yard and screening, if applicable;

(xii) Location of garbage collection area and screening;

(xiii) Location of sign existing and/or proposed signage;

(xiv) Layout of all internal roadways;

(xv) Location of stormwater management facilities;

(xvi) Utility lines and easements; and

(xvii) Signature of applicant.

(b) Grading plans and drainage plans and calculations are not required for Planning Commission site plan review, but shall be required prior to issuance of any building permits. Such plans shall be prepared by a registered design professional licensed by the State of West Virginia, and as authorized by West Virginia State law; and shall also meet all applicable local, state and federal regulations.

(c) A complete list of the names and addresses of all property owners for parcels that are, in whole or in part, within 200 feet of any property line of the lot(s) to be developed. Such information shall be obtained from the Monongalia County Assessor's Office.

(d) Parking plan.

(e) Landscaping plan.

(f) Sign plan.

(g) Approved WV Division of Highways ~~Access~~ Permit and/or Agreement, if applicable, is not required for Planning Commission site plan review, but shall be required prior to issuance of a building permit. In the event a traffic analysis or traffic impact study is required and the review of same involves WV Division of Highways, written/electronic correspondence from the WV Division of Highways documenting its approval of the traffic analysis or traffic impact study must be presented to the Planning Commission by the applicant prior to site plan approval.

(h) Any other such information concerning the lot or neighboring lots as may be required by the Planning Director to determine conformance with, and provide for the enforcement of, this article; where deemed necessary, the Planning Director may require that in the case of accessory structures or minor additions, all dimensions shown on plans relating to the size of the lot and the location of the

structure(s) thereon be based on an actual survey by a registered land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant.

This ordinance shall be effective upon date of adoption.

FIRST READING:

ADOPTED:

FILED:

RECORDED:

_____
Mayor

_____
City Clerk

MORGANTOWN PLANNING COMMISSION

December 11, 2014
6:30 PM
City Council Chambers

STAFF REPORT

CASE NO: TX14-02 / Administrative / Article 1385 Site Plan Review

REQUEST:

Administratively requested Zoning Text Amendment to Article 1385 of the Planning and Zoning Code as it relates to Site Plan Review.

BACKGROUND and ANALYSIS:

Article 1385.08(A)(1) of the Planning and Zoning Code identifies what documents and information must be submitted with Type III Site Plan Applications for Developments of Significant Impact that are reviewed by the Planning Commission, which are attached hereto as Exhibit 1.

Exhibit 1 highlights that an "Approved WV Division of Highways Access Permit, if applicable" shall be submitted as a part of a Type III Site Plan application.

Many developments require approvals by various state and local authorities prior to the commencement of construction. Coordination and cooperation between authorities best serves the public's interest and expectation for efficient and effective administration of public policy.

It has been the consistent practice of the Planning Division and the Planning Commission for Type III Site Plans to uphold the spirit and intent of this access permit provision by ensuring that the Planning Commission's site plan approval is not complete until access permits are issued by the West Virginia Division of Highways (WVDOH) when state roadways are involved. This element is stated in the list of conditions that Planning Commission normally includes in its approvals.

West Virginia State Code §8A-5-12 provides that when the Planning Commission approves a site plan, its decision is a significant affirmative governmental act that establishes a vested property right, which cannot be later affected or taken outside of very narrow statutory circumstances and/or compensation. The Planning Division has been advised on several occasions by WVDOH that its permits establish a vested right to access WVDOH's roadway system. Permitting these vested rights to be established must be pursued collaboratively for the greater good of affecting local and state policies attentively and effectively.

The practice of including a site plan approval condition that, when applicable, WVDOH access permits must be issued prior to building permit issuance has been consistently, fairly, and equitably applied since the subject provision was enacted by City Council in 2006. City administration, the Planning Commission, and the Morgantown community are in the strongest position to affect site planning and best access management practice and design by working with WVDOH in this manner.

Enforcing a literal application of Article 1385.08(A)(1)(g) to require WVDOH access permit issuance prior to Planning Commission consideration of a Development of Significant Impact will result in the establishment of a vested access right well in

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Christopher Fletcher, AICP
Director

Planning Division
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Morgantown, WV 26505
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advance of the community's awareness of a proposed development, which will undermine the City's ability to fully administer local land use and land development regulations and related approvals.

Moreover, WVDOH requires complete development plans to be submitted and approved as a part of its MM-109 permitting/agreement process. Requiring this to occur before presentation to the Planning Commission places a significant financial burden on the developer to complete site and development designs prior to knowing whether or not the Planning Commission will approve the development or require design modification. This burden is unnecessary and can cause time delays for construction and deliver; both of which are not customer-oriented and do not attract economic development confidence or interest.

The communication and review process that City Administration and WVDOH have implemented over the last several years has been successful. However, the Planning and Zoning Code, as written, does not facilitate this intergovernmental collaboration.

In a recent Administrative Appeal decision, the Board of Zoning Appeals concluded that the term "shall" in Article 1385.08(A)(1) must be interpreted and administered literally under the law. In other words, a Type III Site Plan Application may not be complete and may not be presented to the Planning Commission until an access permit from WVDOH is submitted by the petitioner.

City Administrative met with WVDOH officials recently to discuss the present challenge in the Planning and Zoning Code. Monongalia County Planning Office personnel joined the discussion as they too have similar site plan application requirements. Based on these discussions, the following zoning text amendment to Article 1385.08(A)(1)(g) has been developed to resolve this local legislative hindrance (deleted matter struck through; new matter underlined).

(g) Approved WV Division of Highways ~~Access~~ Permit and/or Agreement, if applicable, is not required for Planning Commission site plan review, but shall be required prior to issuance of a building permit. In the event a traffic analysis or traffic impact study is required and the review of same involves WV Division of Highways, written/electronic correspondence from the WV Division of Highways documenting its approval of the traffic analysis or traffic impact study must be presented to the Planning Commission by the applicant prior to site plan approval.

Please note that similar provisions are currently provided in Article 1385.08(A)(1)(b) concerning the design and approval of grading and drainage related development.

STAFF RECOMMENDATION:

To ensure successful continuation of collaboration between the City of Morgantown and the West Virginia Division of Highways in reviewing development and furthering best access management practices, Staff respectfully advises the Planning Commission to forward a favorable recommendation to City Council to amend Article 1385.08(A)(1)(g) as presented above.

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1385.08 TYPE III: PLANNING COMMISSION REVIEW OF DEVELOPMENTS OF SIGNIFICANT IMPACT AND MAJOR DEVELOPMENTS OF SIGNIFICANT IMPACT.

(A) Developments of Significant Impact are those that have a Citywide impact. Such impacts would typically involve the transportation network, environmental features such as parks or stream corridor, and local schools.

(1) All applications for a Development of Significant Impact shall be accompanied by the following:

(a) A site plan (14 copies), drawn to scale, that includes the following for the use of the Planning Director:

(i) The actual dimensions, size, square footage, and shape of the lot to be built upon as shown on an actual survey by a licensed land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant;

(ii) The exact sizes and locations on the lot of existing structures, if any;

(iii) The location(s), square footage(s), and dimensions of all proposed principal, accessory, and/or temporary structure(s) and/or alteration(s);

(iv) The location of the lot with respect to adjacent rights-of-way;

(v) The existing and proposed uses of the structure(s) and land;

(vi) The number of employees, families, housekeeping units, bedrooms, or rental units the structure(s) is designed to accommodate;

(vii) The location and dimensions of off-street parking and means of ingress and egress for such space;

(viii) Height of all structure(s);

(ix) The clear zone for structures similar to silos, grain bins, windmills, chimneys, stacks, spires, flag pole, skylights, derricks, conveyors, cooling towers, observation towers, water tanks, telecommunication facilities, etc. in excess of fifty (50) feet in height;

(x) Setbacks;

(xi) Buffer yard and screening, if applicable;

(xii) Location of garbage collection area and screening;

(xiii) Location of sign existing and/or proposed signage;

(xiv) Layout of all internal roadways;

(xv) Location of stormwater management facilities;

(xvi) Utility lines and easements; and

(xvii) Signature of applicant.

(b) Grading plans and drainage plans and calculations are not required for Planning Commission site plan review, but shall be required prior to issuance of any building permits. Such plans shall be prepared by a registered design professional licensed by the State of West Virginia, and as authorized by West Virginia State law; and shall also meet all applicable local, state and federal regulations.

(c) A complete list of the names and addresses of all property owners for parcels that are, in whole or in part, within 200 feet of any property line of the lot(s) to be developed. Such information shall be obtained from the Monongalia County Assessor's Office.

(d) Parking plan.

(e) Landscaping plan.

(f) Sign plan.

(g) Approved WV Division of Highways Access Permit, if applicable.

(h) Any other such information concerning the lot or neighboring lots as may be required by the Planning Director to determine conformance with, and provide for the enforcement of, this article; where deemed necessary, the Planning Director may require that in the case of accessory structures or minor additions, all dimensions shown on plans relating to the size of the lot and the location of the structure(s) thereon be based on an actual survey by a registered land surveyor or registered design professional licensed by the State of West Virginia and as authorized by West Virginia State law, said survey to be provided by the applicant.

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE 1393 OF THE PLANNING AND ZONING CODE AS IT RELATES TO VIOLATIONS AND ENFORCEMENT.

The Morgantown City Council hereby ordains that Article 1393.01 "Remedies and Penalties" of the City's Planning and Zoning Code is amended as follows (deleted matter struck through; new matter underlined):

ARTICLE 1393

Violations and Enforcement

1393.01 REMEDIES AND PENALTIES.

(A) The Planning Commission, the Zoning Board of Appeals, the City Manager, or any designated enforcement official~~, or any person or persons, firm or corporation jointly or severally aggrieved,~~ may institute a suit for injunction in the Circuit Court of Monongalia County to restrain any individual or a governmental unit from violating the provisions of this ordinance.

(B) The Planning Commission, ~~or~~ the Board of Zoning Appeals, the City Manager, or any designated enforcement official may also institute a suit for mandatory injunction directing any individual, a corporation or a governmental unit to remove a structure erected in violation of the provisions of this ordinance.

(C) If the Planning Commission, the Zoning Board of Appeals, the City Manager, or any designated enforcement official is successful in any such suit, the respondent shall bear the costs of the action

~~(C)~~ (D) Any building erected, raised or converted, or land or premises used in violation of any provisions of this ordinance or the requirements thereof is hereby declared to be a common nuisance and as such may be abated in such manner as nuisances are now or may hereafter be abated under existing law.

~~(D)~~ (E) Any person, firm or corporation violating any of the provisions of this ordinance shall for each violation, upon conviction thereof, pay a penalty of not less than fifty dollars ($50) nor more than five hundred dollars ($500), with costs recoverable before the Judge of the Municipal Court; and upon default of payment of the penalty and costs the person or persons convicted may be committed to the City or County Jail for not exceeding thirty (30) days. Each day that a violation is permitted to exist shall constitute a separate offense.

This ordinance shall be effective upon date of adoption.

FIRST READING:

_____
Mayor

ADOPTED:

FILED:

RECORDED:

_____
City Clerk

MORGANTOWN PLANNING COMMISSION

December 11, 2014
6:30 PM
City Council Chambers

STAFF REPORT

CASE NO: TX14-03 / Administrative / Article 1393 Violation and Enforcement

REQUEST:

Administratively requested Zoning Text Amendment to Article 1393 relating to conformity with State Code.

BACKGROUND and ANALYSIS:

Article 1393 "Violations and Enforcement" of the Planning and Zoning Code provides remedies and penalties concerning violations. This municipal authority is derived from West Virginia State Code Chapter 8A, Article 10 "Enforcement Provisions." The following exhibits are attached hereto for comparison.

- Exhibit 1 – Article 1393 of the Planning and Zoning Code
- Exhibit 2 – West Virginia State Code Chapter 8A, Article 10, Paragraphs 1 – 3

There is a slight variation between the City's enforcement provisions and that of the State's, which has resulted in recent attempts to appeal administrative decisions to Circuit Court. Although the lawsuits were dismissed on the basis of a lack of standing, the City Attorney advised that the City's related enforcement provisions in the Planning and Zoning Code should be amended to better reflect State Code and legislative intent.

Specifically, Article 1393.01(A) includes that *"...any person or persons, firm or corporation jointly or severally aggrieved"* may institute a suit for injunction in the Circuit Court of Monongalia to restrain an individual or governmental unit from violating the Planning and Zoning Code (see highlighted text in Exhibit 1).

The intent of State Code Chapter 8A, Article 10 is to grant municipalities and counties necessary authority to enforce ordinances enacted locally under the West Virginia Planning Enabling Law. It is not stated in nor is it the intent of Article 10 to grant this enforcement authority to individuals.

Individuals, specifically "aggrieved persons" as defined under the law, may appeal decisions or orders of the Planning Commission or the Board of Zoning Appeals by filing a writ of certiorari with the Circuit Court, the process for which is provided in State Code Chapter 8A, Article 9 "Appeal Process." This due process provision is separate and distinct from the enforcement authority granted under Article 10.

To correct this discrepancy, the following revisions to Article 1393 of the City's Planning and Zoning Code have been developed in consultation with the City Attorney (deleted matter struck through; new matter underlined).

Development Services
Christopher Fletcher, AICP
Director

Planning Division
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Morgantown, WV 26505
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ARTICLE 1393

Violations and Enforcement

1393.01 REMEDIES AND PENALTIES.

(A) The Planning Commission, the Zoning Board of Appeals, the City Manager, or any designated enforcement official~~, or any person or persons, firm or corporation jointly or severally aggrieved,~~ may institute a suit for injunction in the Circuit Court of Monongalia County to restrain any individual or a governmental unit from violating the provisions of this ordinance.

(B) The Planning Commission, ~~or~~ the Board of Zoning Appeals, the City Manager, or any designated enforcement official may also institute a suit for mandatory injunction directing any individual, a corporation or a governmental unit to remove a structure erected in violation of the provisions of this ordinance.

(C) If the Planning Commission, the Zoning Board of Appeals, the City Manager, or any designated enforcement official is successful in any such suit, the respondent shall bear the costs of the action

~~(C)~~ (D) Any building erected, raised or converted, or land or premises used in violation of any provisions of this ordinance or the requirements thereof is hereby declared to be a common nuisance and as such may be abated in such manner as nuisances are now or may hereafter be abated under existing law.

~~(D)~~ (E) Any person, firm or corporation violating any of the provisions of this ordinance shall for each violation, upon conviction thereof, pay a penalty of not less than fifty dollars ($50) nor more than five hundred dollars ($500), with costs recoverable before the Judge of the Municipal Court; and upon default of payment of the penalty and costs the person or persons convicted may be committed to the City or County Jail for not exceeding thirty (30) days. Each day that a violation is permitted to exist shall constitute a separate offense.

STAFF RECOMMENDATION:

To ensure consistency between related enforcement provisions provided in West Virginia State Code Chapter 8A, Article 10 and Article 1393 of the City's Planning and Zoning Code, Staff respectfully advises the Planning Commission to forward a favorable recommendation to City Council to amend Article 1393 as presented above.

Development Services
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Director

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ARTICLE 1393
Violations and Enforcement

1393.01 Remedies and penalties.

CROSS REFERENCES
Enforcement provisions - see W. Va. Code Art. 8A-10

1393.01 REMEDIES AND PENALTIES.

(A) The Planning Commission, the Zoning Board of Appeals, the City Manager, or any designated enforcement official, or any person or persons, firm or corporation jointly or severally aggrieved, may institute a suit for injunction in the Circuit Court of Monongalia County to restrain any individual or a governmental unit from violating the provisions of this ordinance.

(B) The Commission or the Board may also institute a suit for mandatory injunction directing any individual, a corporation or a governmental unit to remove a structure erected in violation of the provisions of this ordinance.

(C) Any building erected, raised or converted, or land or premises used in violation of any provisions of this ordinance or the requirements thereof is hereby declared to be a common nuisance and as such may be abated in such manner as nuisances are now or may hereafter be abated under existing law.

(D) Any person, firm or corporation violating any of the provisions of this ordinance shall for each violation, upon conviction thereof, pay a penalty of not less than fifty dollars ($50) nor more than five hundred dollars ($500), with costs recoverable before the Judge of the Municipal Court; and upon default of payment of the penalty and costs the person or persons convicted may be committed to the City or County Jail for not exceeding thirty (30) days. Each day that a violation is permitted to exist shall constitute a separate offense.

WEST VIRGINIA CODE
CHAPTER 8A. LAND USE PLANNING.
ARTICLE 10. ENFORCEMENT PROVISIONS.

§8A-10-1. Enforcement.

The governing body of a municipality or county may:

(1) Enforce penalties, set out in section two of this article, for failure to comply with the provisions of any ordinance or rule and regulation adopted pursuant to the provisions of this chapter; and

(2) Declare that any buildings erected, raised or converted, or land or premises used in violation of any provision of any ordinance or rule and regulation adopted under the authority of this chapter shall be a common nuisance and the owner of the building, land or premises shall be liable for maintaining a common nuisance.

§8A-10-2. Penalty.

A person who violates any provision of this chapter is guilty of a misdemeanor, and upon conviction, shall be fined not less than fifty dollars nor more than five hundred dollars.

§8A-10-3. Injunction.

(a) The planning commission, board of subdivision and land development appeals, the board of zoning appeals or any designated enforcement official may seek an injunction in the circuit court of the county where the affected property is located, to restrain a person or unit of government from violating the provisions of this chapter or of any ordinance or rule and regulation adopted pursuant hereto.

(b) The planning commission, board of subdivision and land development appeals, the board of zoning appeals or any designated enforcement official may also seek a mandatory injunction in the circuit court where the affected property is located, directing a person or unit of government to remove a structure erected in violation of the provisions of this chapter or of any ordinance or rule and regulation adopted pursuant hereto.

(c) If the planning commission, board of subdivision and land development appeals, the board of zoning appeals or the designated enforcement official is successful in any such suit, the respondent shall bear the costs of the action.

AN ORDINANCE PROVIDING FOR LEASING TO RSA FLIGHT TRAINING, LLC, LESSEE, BY THE CITY OF MORGANTOWN, LESSOR, A CERTAIN AREA AT THE MORGANTOWN MUNICIPAL AIRPORT AND DECLARING THE LEASE AND MEMORANDUM OF LEASE HERETO ATTACHED AS A PART THEREOF.

The City of Morgantown Hereby Ordains:

That the City Manager is hereby authorized to execute, on behalf of the City of Morgantown, the Lease Agreement and Memorandum of Lease attached to, and made a part of, this ordinance.

This Ordinance shall be effective from the date of its adoption.

First Reading:

Adopted:

_____
Mayor

Filed:

Recorded:

_____
City Clerk

LEASE

THIS LEASE (the "Lease"), made as of the _____ day of _____ by and between CITY OF MORGANTOWN, a West Virginia municipal corporation, hereinafter referred to as "Landlord" and RSA Flight Training, LLC, hereinafter referred to as "Tenant."

WHEREAS, Tenant intends to lease that certain hangar containing twenty seven hundred (2,700) square feet, more or less, owned by Landlord, being a part of the Morgantown Municipal Airport ("Airport"), all as more particularly shown and described on Exhibit A attached hereto and made a part hereof, together with all now existing or hereafter made improvements and all appurtenances belonging thereto (the "Premises");

WHEREAS, Landlord, subject to the terms of this Lease, intends to Lease the Premises to Tenant.

WITNESSETH:

That for and in consideration of Ten Dollars ($10.00), cash in hand paid and other good and valuable consideration, and the rents, covenants and conditions hereinafter set forth, the receipt of all of which is hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Premises. Landlord does hereby let, lease and demise unto the Tenant and Tenant hereby takes and hires from Landlord, the Premises.

2. Initial Term. The initial term of this Lease shall be for a period of three (3) years and shall commence on February 1, 2015 (the "Initial Term"). The Initial Term shall expire on January 31, 2018.

3. Renewal Terms. Provided Tenant is not in default in the performance of any of its obligations under this Lease, Tenant shall have the right and option to renew this Lease for three (3) additional terms of three (3) years each, each of which terms shall commence immediately upon the expiration of the Initial Term, or the immediately preceding term, and shall expire at midnight on the day preceding the third anniversary thereof (individually, "Renewal Term" and collectively, "Renewal Terms"). Each Renewal Term shall be renewed automatically without notice from Tenant to Landlord unless Tenant provides Landlord with written notice that Tenant does not intend to renew this Lease at least three (3) months prior to the date of expiration of the Initial Term or the then current Renewal Term, as the case may be.

4. Rental; Base Rent. Tenant hereby covenants and agrees to pay to Landlord for the initial term, without deduction or set off and without demand, initial rent for the Premises in the monthly amount of $200.00 beginning on February 1, 2015, and continuing for each consecutive month until January of 2017. Should Tenant renew this Agreement after the initial term, the rent shall be as follows: 1st 3 year renewal $300.00 per month, 2nd 3 year renewal $400.00 per month, and 3rd 3 year renewal $500.00 per month. Rental payments shall be made payable to Landlord at the

address set forth in paragraph 29 of this Lease, or to such other address as Landlord specifies to Tenant in writing. In the event rent is not received by the 1st day of the month, Tenant shall pay unto Landlord a late payment equal to five percent (5%) of the amount due.

In the event any federal, state or local government or governmental agency temporarily prevents or stops the use of the Airport or any portion thereof so that Tenant is not entitled to its normal use of the Premises, all rental payments due hereunder shall be abated until such restrictions, prevention or stoppage has been removed.

5. Tenant's Use of the Premises. Tenant will maintain the aircraft hangar (the "Hangar") and operate a flight school, charter business, and aircraft repair business on the Premises. The Premises shall be used in accordance with all applicable federal state and local laws, regulations, ordinances, rules and requirements. Tenant will have the exclusive right to utilize the Hangar for the storage of the Tenant's aircraft and any tools, equipment or machinery or other items related to the operation and maintenance of the Tenant's aircraft, as well as for such uses reasonably required in the operation of a flight school, charter business, and aircraft repair business authorized by this paragraph.

6. Use of Airport. The Tenant shall have the right to the non-exclusive use, in common with others, of the Airport parking areas, appurtenances and improvements; the right of ingress to and egress from the Premises, which shall extend to Tenant's employees, guests and patrons; and the right in common with other tenants of the Airport to use common areas of the Airport, including but not limited to the runways, taxiways, aprons, roadways and other conveniences for the take-off, flying and landing of the Tenant's aircraft.

7. Construction Standards: Tenant shall cause any construction on the Premises to be completed in a good and workmanlike manner according to the customary standards of the trade and in compliance with the laws and regulations of any governmental authority having jurisdiction thereof, all at Tenant's sole expense. Tenant shall obtain all necessary permits, approvals and licenses for such work and construction. No such work will be initiated by Tenant until it has received written permission to do so from the Airport Director.

8. End of Term. Upon the later of the expiration or termination of the Initial Term or, if the Term is renewed, any Renewal Term of this Lease, the hangar and all improvements made by Tenant on the Premises shall be and become the sole and exclusive property of Landlord, without the requirement of Tenant executing any documents transferring title thereto.

9. Landlord's Representation of Quiet Enjoyment. Landlord covenants that Tenant may quietly enjoy the Premises without hindrance by Landlord or any party claiming under Landlord, so long as Tenant is not in default in the

performance of any of its obligations under this Lease.

10. Maintenance and Replacement and Casualty Insurance. Tenant shall, at its sole cost and expense, keep and maintain the Premises in a good and tenantable condition and shall make and pay for all maintenance, repairs, and replacements thereto during the Initial Term and any Renewal Terms of this Lease, including, without limitation, replacement of the Hangar in the event of any loss or destruction of the Hangar. Tenant shall not be permitted to defer or delay maintenance or repairs of the Premises or such improvement, it being understood and agreed that Tenant shall continue to maintain, repair and replace the Premises until the date of termination of this Lease. Upon Tenant's request, Landlord agrees that it will provide snow removal services to the Premises. The obligation to insure against loss, injury, and/or damage to and/or destruction of the Hangar shall belong to Tenant. The insurance policy required to be obtained, procured, and/or carried by Tenant under and in accordance with this section shall (a) name Landlord and any Leasehold Lender as additional insured parties and as either co-payees and/or loss payees, (b) provide that the policy shall not be terminated, canceled, reduced, non-renewed, or materially modified without at least thirty (30) calendar days' prior written notice to Landlord and any Leasehold Lender, (c) be written on an "occurrence" basis, and (d) be written for a period of at least one (1) year. In the event of any loss, injury, and/or damage to and/or destruction of the Hangar, all insurance proceeds shall be dedicated to the rebuilding and/or replacement of the Hangar.

11. Utilities. Tenant shall be solely responsible and shall make all arrangements for utilities and services to and for the Premises. Tenant shall pay all fees and costs for all utilities and services, including without limitation security, gas, electricity, water, telephone, sewer, garbage and fire service, as well as any other utility or service used on or supplied to the Premises, including the cost of installation, maintenance or replacement thereof. Landlord agrees to fully cooperate with Tenant in securing and maintaining all utilities and services.

12. Taxes. Tenant shall pay, or cause to be paid, before delinquency all taxes, assessments and fees relating to the Premises, the leasehold estate created by this Lease, and its personal property on the Premises.

13. Encumbrance of the Leasehold Estate:

(a) In and for the purposes of this section of this Lease:

(i) "Leasehold Lender" means a party secured by a Leasehold Security Instrument.

(ii) "Leasehold Lender Default Cure Period" means a period of sixty (60) calendar days subsequent to a Leasehold Lender's receipt of a Notice of Tenant Failure; provided, however, that in the event that (i) the Tenant

Event of Default specified in a Notice of Lessee Failure shall be of such a nature or character that it cannot reasonably be cured or remedied within a period of sixty (60) calendar days subsequent to the Leasehold Lender's receipt of the Notice of Lessee Failure, (ii) the Leasehold Lender shall commence to attempt to cure or remedy the Tenant Event of Default within a period of twenty (20) calendar days subsequent to the Leasehold Lender's receipt of the Notice of Lessee Failure, and (iii) the Leasehold Lender shall diligently continue to attempt to cure or remedy the Lessee Event of Default subsequently, such period of sixty (60) calendar days shall extend for a period which, under all prevailing circumstances, shall be reasonable.

(iii) "Leasehold Security Instrument" means any deed of trust, credit line deed of trust, mortgage, fixture filing, security agreement, financing statement, assignment of leases and rents, or other security instrument that encumbers or imposes or that shall encumber or impose a lien or security interest upon the leasehold estate created, granted, and/or demised by this Lease, in whole or in part, and all renewals, modifications, amendments, supplements, consolidations, replacements, extensions, and/or restatements thereto and/or thereof.

(b) Notwithstanding any other provision of this Lease, and with the intent that the provisions of this section shall prevail, control, and dominate over any and all other provisions of this Lease that might in any way or manner be inconsistent with, contradictory to, and/or in conflict with the provisions of this section, Tenant shall have the right, capacity, authority, and power to encumber Tenant's right, title, and interest in, of, and to this Lease and the leasehold estate, in whole or in part, with one (1) or more Leasehold Security Instruments and shall not be required to obtain the consent and/or approval of Landlord with respect to the encumbrance of Tenant's right, title, and interest in, of, and to this Lease and the leasehold estate with and/or by a Leasehold Security Instrument.

(c) To the extent reasonably necessary for Tenant to obtain financing secured by this Lease and/or the leasehold estate, Landlord shall promptly after submission execute, acknowledge, and deliver any reasonable agreements amending, modifying, and/or supplementing this Lease requested by any proposed Leasehold Lender so long as such amendments, modifications, and/or supplements shall not decrease Tenant's obligations, decrease Landlord's rights, and/or increase Landlord's obligations under, in accordance with, and/or pursuant to this Lease or modify the use restrictions contained herein.

(d) The encumbrance of Tenant's right, title, and interest in, of, and to this Lease, in whole or in part, with and/or by one (1) or more Leasehold Security Instruments, shall not be an assignment for the purposes of this Lease and not be or constitute a Tenant Event of Default.

(e) For any of the other and remaining provisions of this section to apply in any circumstance, a Leasehold Lender first must deliver to Landlord within twenty (20) calendar days of the delivery of a Leasehold Security Instrument by Tenant (i) a true and correct photocopy of the Leasehold Security Instrument and (ii) notice of the identity and mailing address of the Leasehold Lender. Compliance with the foregoing time period is specifically and expressly of the essence with respect to and in connection with any of the other and remaining provisions of this section.

(f) When a Leasehold Security Instrument shall be in existence, subject to the approval of the airport manager, which shall not be unreasonably conditioned, delayed, or withheld after confirming compliance with any applicable federal obligations:

(i) This Lease shall not be amended, modified, supplemented, altered, changed, enlarged, and/or restated in any way, manner, character, or nature, by performance, acquiescence, course of conduct, or otherwise, without the prior written consent of a Leasehold Lender.

(ii) A Leasehold Lender shall be given notice of any legal, equitable, or other proceeding pertaining to or in any way, manner, character, or nature concerning, arising out of, and/or relating to this Lease and shall have the right, but not the obligation, to intervene in such proceeding and be made a party to such proceeding.

(iii) Landlord shall be given notice of any legal, equitable, or other proceeding pertaining to or in any way, manner, character, or nature concerning, arising out of, and/or relating to the Leasehold Security Instrument and shall have the right, but not the obligation, to intervene in such proceeding and be made a party to such proceeding.

(iv) Landlord shall, upon serving Tenant with any notice of monetary default, notice of non-monetary default, and/or notice of termination, simultaneously serve a photocopy of the same upon a Leasehold Lender.

(v) A Leasehold Lender shall, upon serving Tenant with any notice of default of the Leasehold Security Instrument, or any other notice, demand, request, or other communication required, authorized, advisable, and/or permitted under, in accordance with, and/or pursuant to the Leasehold Security Instrument, simultaneously serve a photocopy of the same upon Landlord.

(vi) In the event that Tenant shall not remedy or cure a Tenant Event of Default within and during the applicable Tenant Event of Default cure period, Landlord shall notify a Leasehold Lender of such inaction, failure,

neglect, and/or refusal on the part of Tenant, and include and specify in detail in such notice the nature and character of such Tenant Event of Default ("Notice of Tenant Failure").

(vii) In the event that Tenant shall not remedy or cure an event of default of the Leasehold Security Instrument, within and during the applicable event of default cure period, a Leasehold Lender shall notify Landlord of such inaction, failure, neglect, and/or refusal on the part of Tenant, and include and specify in detail in such notice the nature and character of such Tenant event of default ("Notice of Tenant Default").

(viii) A Leasehold Lender shall have the right, but not the obligation, to remedy or cure or cause to be remedied or cured any Tenant Event of Default within and during the Leasehold Lender Default Cure Period and Landlord shall accept such performance by or at the instigation of the Leasehold Lender as if such performance had been by Tenant.

(ix) Landlord shall have the right, but not the obligation, to remedy or cure or cause to be remedied or cured any Tenant default of the Leasehold Security Instrument within and during (1) thirty (30) days of Landlord's receipt of a Notice of Tenant Default (or such longer time if not capable of being cured in such thirty (30) day period and Landlord is diligently pursuing a cure thereof) with respect to non-monetary defaults and (2) fifteen (15) days of Landlord's receipt of a Notice of Tenant Default with respect to monetary defaults and the Leasehold Lender shall accept such performance by or at the instigation of Landlord as if such performance had been by Tenant. Further, upon such performance by Landlord and continued performance by Landlord, a Leasehold Lender shall not exercise any rights pursuant to the Leasehold Security Instrument.

(x) In addition to the right to remedy or cure or cause to be remedied or cured any Tenant Event of Default within and during the Leasehold Lender Default Cure Period, a Leasehold Lender shall also have the specific and express right, but not the obligation, to (1) postpone and/or extend any specified date of cancellation and/or termination of this Lease set and/or fixed by Landlord in a notice of default and/or termination or otherwise for a period of not more than two hundred forty (240) calendar days subsequent to the Leasehold Lender's receipt of a notice of default and/or termination and (2) postpone and/or extend any cancellation and/or termination of this Lease as a result of the existence of a Tenant Event of Default, the existence of which would otherwise prevent or preclude the extension and/or continuation of the term, for a period of not more than two hundred forty (240) calendar days subsequent to the Leasehold Lender's receipt of notice from Landlord that the term shall not extend and/or continue as a result of the existence of a Tenant Event of Default, so long as the Leasehold Lender shall (1) remedy or cure or cause to be

remedied or cured any Tenant Event of Default within and during a period equivalent to the Leasehold Lender Default Cure Period, (2) undertake to Landlord to and perform, satisfy, observe, comply with, and/or conform to the covenants, conditions, agreements, and/or obligations to be performed, satisfied, observed, complied with, and/or conformed to by Tenant under, in accordance with, and pursuant to this Lease during such two hundred forty (240) calendar day period, and (3) forthwith commence steps to acquire and/or sell Tenant's right, title, and interest in, of, and to this Lease by foreclosure of the Leasehold Security Instrument or otherwise and prosecute the same to completion within and during such two hundred forty (240) calendar day period. In the event that a Leasehold Lender shall perform and satisfy the foregoing obligations within the foregoing time periods, this Lease shall not cancel or terminate and shall extend and/or continue.

(xi) A Leasehold Lender and/or any other purchaser at a foreclosure or judicial sale ("Purchaser") shall have the unrestricted right, capacity, authority, and power to acquire Tenant's right, title, and interest in, of, and to this Lease by foreclosure, assignment, transfer in lieu of foreclosure, special commissioner sale, bankruptcy trustee sale, or otherwise, and any such acquisition shall not require Landlord's consent and/or approval or be deemed a Tenant Event of Default. Upon Landlord's receipt from a Purchaser of written notice of such an acquisition, Landlord shall permit the Purchaser to enter into possession of the Premises and to hold the same and exercise and enjoy all of the rights, privileges, and benefits of Tenant under, in accordance with, and pursuant to this Lease, and such acquisition shall constitute an assumption by the Purchaser of Tenant's obligations under, in accordance with, and pursuant to this Lease; provided, however, that (1) the Purchaser shall not be obligated or liable for Tenant's obligations under, in accordance with, and/or pursuant to this Lease until the Purchaser shall become the owner of the Leasehold Estate, and then only during the period of time that the Purchaser shall be the owner of the Leasehold Estate and (2) as a condition to the right of the Purchaser to acquire Tenant's right, title, and interest in, of, and to this Lease and the Leasehold Estate, the Purchaser shall promptly, upon acquisition, commence remedying or curing or causing to be remedied or cured all of the Tenant Events of Default which shall be in existence as of the date of such acquisition.

(xii) Any and all rights, title, interests, claims, liens, and/or security interests, however characterized or designated, which Landlord has, may have, and/or shall have or acquire, whether as of the date of this Lease or subsequently, whether arising and/or created by contract, agreement, statute, common law, or otherwise, in, of, and/or to Tenant's property located at the Premises shall be and shall at all times remain subject, subordinate, and inferior in priority to the rights, liens, and/or security

interests of a Leasehold Lender in, of, and/or to Tenant's property located at the Premises.

(xiii) In the event that a default and/or breach shall occur under a Leasehold Security Instrument and/or any promissory notes, agreements, instruments, documents, and/or other security instruments in any way, manner, nature, and/or character evidencing, securing, supporting, concerning, and/or in relation to the obligations secured by the Leasehold Security Instrument, which is not cured by Landlord, a Leasehold Lender and its agents, representatives, employees, successors, and assigns shall have the right, capacity, power, and authority to enter upon the Premises at any time, upon providing reasonable notice to Landlord in advance thereof, for the purposes of inspecting, inventorying, assembling, marshaling, selling, and/or removing Tenant's property located at the Premises; provided, however, that the Leasehold Lender shall have the affirmative obligation to repair any and all damage caused to the Premises as a result of and/or during the course of the same.

(xiv) In the event that a Leasehold Lender shall take possession or seek to take possession of any of Tenant's property located at the Premises, Landlord shall not interfere with, limit, restrict, hinder, obstruct, prohibit, prevent, and/or preclude, in any way, nature, or manner, such taking and possession and Landlord consents in advance to any such taking and possession at any and all times by a Leasehold Lender and the removal of Tenant's property located at the Premises from the Premises.

(xv) A Leasehold Lender shall not be obligated and/or liable to Landlord for any liabilities, losses, damages (compensatory, punitive, incidental, consequential, foreseeable, unforeseeable, liquidated, unliquidated, or otherwise), costs, expenses, penalties, injuries, assessments, liens, fines, impositions, demands, claims, actions, causes of action, and/or judgments ("Liabilities") as a result of, by reason of, and/or in connection with the Leasehold Lender's entry upon the Premises and/or taking possession of and/or removing from the Premises of Tenant's property located at the Premises, except for those resulting from the Leasehold Lender's gross negligence.

(xvi) In the event that Tenant shall vacate and/or surrender the Premises, whether voluntarily or involuntarily, or the leasehold estate shall cancel, terminate, or expire, a Leasehold Lender shall not be obligated and/or liable for charges for storage of Tenant's property located at the Premises unless Landlord shall provide the Leasehold Lender with written demand to remove the property from the Premises within a reasonable time, which shall not be less than thirty (30) calendar days from the Leasehold Lender's receipt of such written demand, and the Leasehold Lender shall fail to do so within such time; provided, however, that in the event that the

Leasehold Lender shall elect not to exercise its lien(s) and/or security interest(s) in, of, and/or to the property, the Leasehold Lender shall in no way or manner be obligated and/or liable to Landlord for such charges.

(g) In the event that a Leasehold Lender, but not any other Purchaser, shall acquire Tenant's right, title, and interest in, of, and to this Lease, then, notwithstanding any other provision of this Lease, and regardless of whether any Leasehold Security Instrument shall then be and/or remain in existence, the Leasehold Lender shall have the right to assign this Lease without the consent and/or approval of Landlord. In the event that a Leasehold Lender shall assign this Lease, the Leasehold Lender shall notify Landlord of such assignment within ten (10) calendar days of the occurrence thereof.

14. Public Liability Insurance. During the Initial Term and any Renewal Terms, Tenant shall, at its sole cost and expense, keep in full force and effect public liability insurance, underwritten on an occurrences basis, in respect to the use and occupation of the Premises by Tenant, with respect to the negligent acts or omissions of Tenant and its employees, agents, servants, invitees, and licensees, and excluding losses caused by Landlord, other tenants, or other third parties, in an amount of not less than $1,000,000.00 per person and not less than $2,000,000.00 per occurrence on account of personal injury to or death of one or more persons and not less than $1,000,000.00 on account of damage to property. The insurance shall be underwritten by an insurance company licensed to do business in the State of West Virginia and acceptable to Landlord, and must contain a clause or endorsement providing that such policy or policies may not be canceled or terminated without thirty (30) days prior written notice to the Landlord. In addition, in the event that a Leasehold Lender shall be in existence, each such insurance policy required to be obtained, procured, and/or carried by Tenant under and in accordance with this section shall (a) name the Leasehold Lender as additional insured, (b) provide that the policy shall not be terminated, canceled, reduced, non-renewed, or materially modified without at least thirty (30) calendar days' prior written notice to the Leasehold Lender, (c) be issued by an insurance company licensed to do business in the State of West Virginia and which shall be rated A:VIII or better by Best's Key Rating Guide, (d) provide that such insurance cannot be canceled, invalidated, or suspended on account of the conduct of Tenant, (e) be written on an "occurrence" basis, (f) provide that such insurance shall be primary and non-contributing, and (g) be written for a period of at least one (1) year.

Tenant does hereby indemnify, defend and save Landlord harmless from any and all loss, damages, liability, costs and expenses, which Landlord, its agents, servants and

employees may pay or become obligated to pay on account of any claim or assertions of liability arising or alleged to have arisen out of any act or omission of Tenant, its agents, contractors, subcontractors, servants, employees, licensees or invitees in connection with Tenant's use of the Premises except for that caused by Landlord, its employees, agents, or invitees, or the breach of this Lease by Landlord, or caused by any individual or entity not under the control of Tenant.

15. Tenant's Personal Property. Landlord and its heirs, administrators, successors, assigns, employees and agents, shall not be liable for loss of or damage to Tenant's or any subtenant's or assignee's equipment, trade fixtures, furnishings and items of personal property placed in or upon the Premises from accidents,
conditions, or casualty occurring in, on or about the Premises unless due to Landlord's, heirs, administrators, successors, assigns, employees and agents' negligence or willful misconduct. Any insurance upon such equipment, trade fixtures, furnishings and items of personal property shall be kept and maintained at Tenant's sole cost and expense.

16. Hazardous Substances.

Definitions. For purposes of this Lease, the term "Hazardous Substances" means (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; and (b) any chemicals, materials or substances defined as or included in the definitions of "hazardous substances," "hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar import, under all federal, state and local environmental, safety or health laws and ordinances and rules of common law, including but not limited to, the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Section 651 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 960 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1081 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6091 et seq.), the Clean Air Act (42 U.S.C. Section 7401 et seq.) , the Safe Drinking Water Act (42 U.S.C. Sections 300f-300j), and the Federal Water Pollution Control Act, as any of the foregoing may hereafter be amended, any rule or regulation pursuant thereto, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive addressing environmental, health or safety issues of or by any governmental entity.

17. Landlord Representations and Warranties. Except for those Hazardous Substances that are generally utilized by airports of a similar size as the Morgantown Municipal Airport, Landlord represents and warrants that the Premises and improvements located thereon, including ground water, are free and clear of any Hazardous Substances as of the date of this Lease and its heirs, successors, assigns,

contractors, agents, employees or invitees, shall not, in violation of any law regulation or requirement install, store, recycle, dispose of, release or other wise locate, in or upon the Premises, any Hazardous Substance.

18. Tenant Representations and Warranties. Except for those Hazardous Substances that are generally utilized with the operation of an aircraft and maintenance of an airport hangar, the Tenant and its directors, officers, contractors, agents, employees or invitees shall not, in violation of any law, regulation, or requirement install, store, recycle, dispose of, release or otherwise locate in or upon the Premises any Hazardous Substances, in violation of laws or regulations governing the use, storage or disposal of the same. Tenant agrees to indemnify and hold Landlord, its heirs, administrators, assigns, employees, agents and contractors, harmless for any future liability arising out of or connected with any claims, judgments, damages, penalties, fines, assessments, fees and other expenses related in any manner to the actual improper storage or discharge of Hazardous Substances on the Premises caused by the acts or omissions of Tenant, and its directors, officers, contractors, agents, employees or invitees, and Tenant shall further indemnify and hold Landlord,its heirs, administrators, assigns, employees, agents and contractors, armless from any violation of such applicable environmental laws or any breach of the foregoing representations and warranties. Tenant further agrees to pay any and all fines, charges, assessments, fees, damages, losses, claims, liabilities or response costs arising out of or in any way connected with a violation by Tenant and its directors, officers, contractors, agents, employees or invitees of such applicable environmental laws, which indemnifications shall survive the expiration or termination of this Agreement.

19. Landlord's Inspection. Landlord, its agents and employees shall have the right to enter upon and inspect the Premises and any improvements made thereon at all reasonable times.

20. Removal of Personal Property. At any time, including upon the expiration or termination of this Lease, Tenant shall be entitled to remove all personal property, improvements, fixtures, trade fixtures and signs which are placed upon the Premises; provided that each item may be removed without any damage to the Premises and further provided, however, that if Tenant is in default hereunder in the payment of any rentals to Landlord such property shall not be removed by Tenant until such defaults are corrected. Any property of Tenant remaining on the Leased Premises after expiration or termination of this Lease shall be deemed to have been abandoned by Tenant and either party may be retained by Landlord or disposed of in such manner as Landlord may in its sole discretion deem appropriate.

21. Tenant Default. After the occurrence of a Tenant event of default as hereinafter defined ("Tenant Event of Default") Landlord may give notice in writing to Tenant that one or more Events of Default have occurred. If the Tenant Event of

Default specified in said written notice is a monetary Tenant Event of Default and is not cured or corrected within a period of ten (10) days after the giving of the notice, then Landlord may terminate this Lease by sending to Tenant a notice of such termination. If the Tenant Event of Default specified in said written notice is a non-monetary Tenant Event of Default and is not cured or corrected with a period of thirty (30) days after the giving of such notice, then Landlord may terminate this Lease by sending to Tenant a notice of such termination. In the event the non-monetary Tenant Event of Default is not capable of correction within such thirty (30) day period, if Tenant has initiated within said period an effort to correct such default, then such period shall be extended until such time as Tenant ceases to pursue diligently its efforts to accomplish such correction.

22. Tenant Event of Default. A Tenant Event of Default as used in this Lease shall include the following:

(a) Failure by Tenant to pay when due any rent or monies provided to be paid to Landlord under the provisions of this Lease;

(b) Execution by Tenant of an assignment for the benefit of creditors;

(c) The adjudication that Tenant is bankrupt or insolvent or the filing by or against Tenant of a position to have Tenant adjudged to be bankrupt or a petition for the reorganization of Tenant under any law relating to bankruptcy and such adjudication or petition is not dismissed within sixty (60) days of filing.

(d) Appointment of a receiver for Tenant and such receiver is not dismissed within sixty (60) days of appointment; or;

(e) Default by Tenant in the performance of any of the other covenants, conditions, obligations and agreements undertaken by Tenant under the terms of this Lease.

23. Landlord Remedies Cumulative. The remedies provided Landlord herein shall be in addition to those provided by law, including but not limited to, the right to re-enter and take possession of the Premises and buildings and improvements thereon with or without process of law and expel the Tenant without prejudice to any remedies which might otherwise be used by Landlord for the collection of the default rentals. Landlord shall have the right to recover its reasonable legal fees and court costs from Tenant if Landlord prevails in any legal action for the collection of money or enforcement of a duty owed by Tenant pursuant to this Lease, without prejudice to any remedies which might otherwise be used by Landlord for the collection of the default rentals.

24. Landlord Default. The following matters shall constitute Landlord Event of

Default:

(a) Failure of Landlord to abide by any terms or conditions of this Lease;

(b) Breach by Landlord of any representation or warranty of this Lease;

25. Notice, Cure. Upon receipt of written notice from Tenant of the occurrence of a Landlord Event of Default, Landlord shall have thirty (30) days to correct the same. Provided if each matter is of the nature that can not be cured within said thirty (30) day period, Landlord has initiated within said period an effort to cure such default, then such period shall be extended until such time as Landlord ceases to pursue diligently its efforts to accomplish such correction.

26. Tenant Remedies. The remedies provided Tenant shall be the right to terminate this Lease upon providing Landlord thirty (30) days notice of termination.

27. Permits and Licenses. Landlord agrees to cooperate and reasonably assist Tenant with obtaining any state or federal permit, license or governmental authorization necessary to permit the use of the Premises by Tenant.

28. Waiver. Failure of Landlord to enforce the breach of any violation of the terms of this lease shall not be considered as a waiver of any subsequent violation.

29. Notice. All notices to be given hereunder by either party shall be in writing and shall be sent by U.S. Mail, Certified, Return Receipt Requested, to Landlord and Tenant at the addresses stated below:

Landlord:	Office of the Airport Director Morgantown Municipal Airport 100 Hart Field Road Morgantown, WV 26505
Tenant:	RSA Flight Training, LLC Attn: Joe Weiss/Bret Kennedy 82 Hart Field Road, Suite 241 Morgantown, WV 26505

30. Successors. The terms, conditions, covenants and agreements herein contained shall extend to, and be binding upon the parties hereto and their respective heirs, administrators, successors and permitted assigns. Tenant shall not assign, sublease, transfer or convey all or any part of its interest in this Lease without first receiving the prior written consent of Landlord, which consent will not be unreasonably withheld.

31. Memorandum of Lease. This Lease shall not be recorded, but either party may

record a Memorandum of Lease. The party requesting that the Memorandum of Lease be recorded shall prepare and pay all costs of preparation and recording of the Memorandum of Lease.

32. Applicable Law. This Lease shall be construed in accordance with the laws of the State of West Virginia.

33. Severability. The unenforceability, invalidity or illegality of any provision of this Lease shall not render any of the other provisions of the Lease unenforceable, invalid or illegal.

34. Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Lease.

35. Captions. The exception appearing in this Lease are for the purposes of identification only and shall not be considered or construed as affecting in any way, the meaning of the provisions of this Lease.

36. Entire Agreement. This Lease and the Exhibits attached hereto contain the entire agreement between Landlord and Tenant concerning the Premises and there are no other agreements, either oral or written.

37. Agreements with USA. This Lease shall be subordinate to the provisions of any existing or future agreement between Landlord and the United States, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

38. Non-Discrimination: Tenant shall (a) furnish services on a reasonable, and not unjustly discriminatory, basis to all users thereof and (b) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

[Signature page below]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed as of the date first above written.

LANDLORD: CITY OF MORGANTOWN,
A West Virginia municipal corporation

By: _____

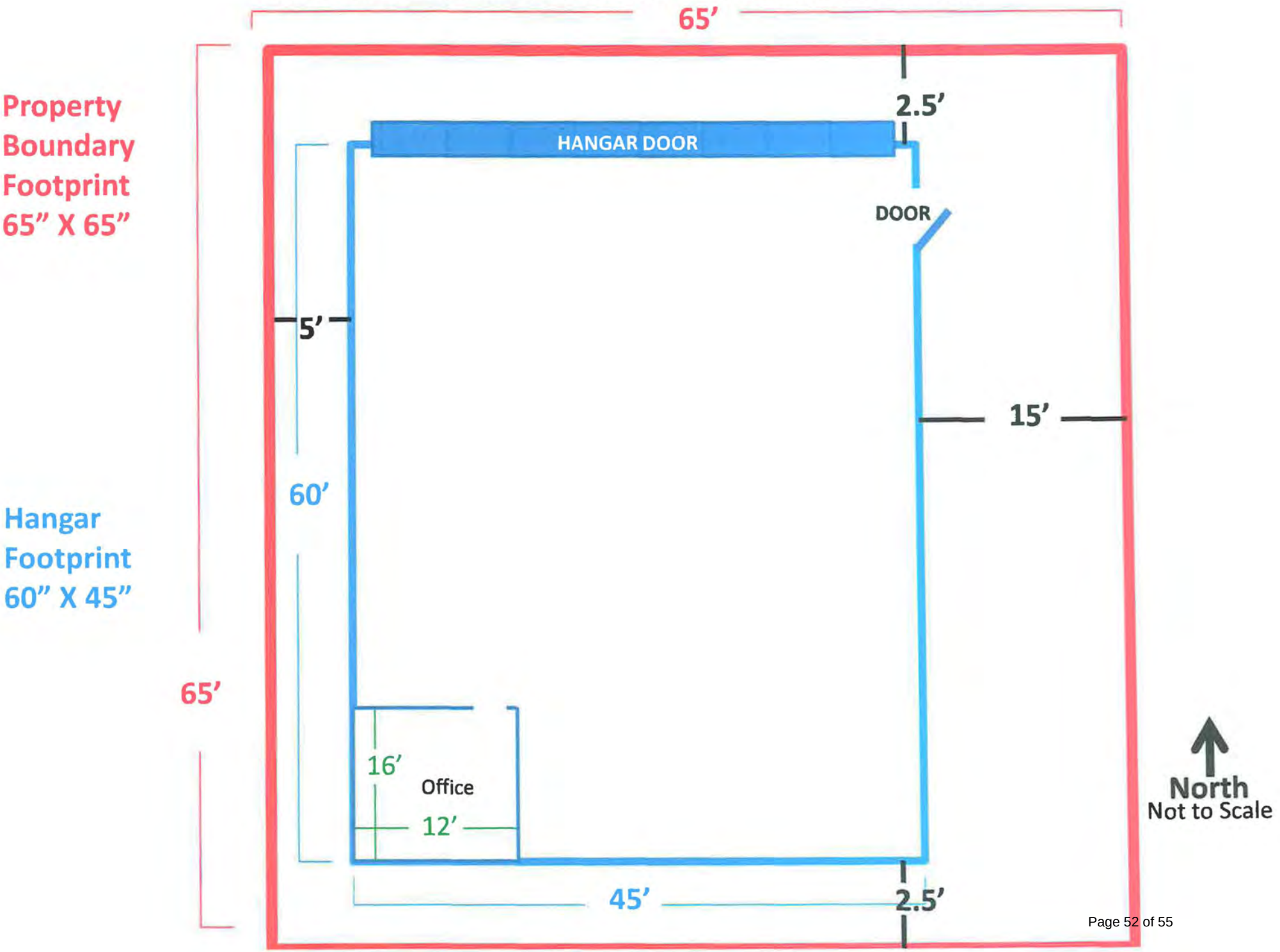
Its: _____

TENANT: RSA Flight Training, LLC

By: _____

Its: _____

BYERS HANGAR - MORGANTOWN MUNICIPAL AIRPORT



This instrument was prepared by:

Robert Louis Shuman
Reeder & Shuman
256 High Street
Post Office Box 842
Morgantown, West Virginia 26507-0842

Memorandum of Lease Agreement

This Memorandum of Lease Agreement ("Memorandum") is made and entered into on _____, 2015, by and between The City of Morgantown, West Virginia, a municipal corporation ("Lessor"), and RSA Flight Training, LLC, a West Virginia limited liability company ("Lessee").

Under, in accordance with, and pursuant to the provisions of West Virginia Code § 40-1-8, as in effect as of the date of this Memorandum, Lessor and Lessee set forth the following information with respect to that certain lease agreement made and entered into by and between Lessor and Lessee ("Lease Agreement"):

(1) Lessor: The City of Morgantown, West Virginia, a municipal corporation
389 Spruce Street, Morgantown, West Virginia 26505

(2) Lessee: RSA Flight Training, LLC, a West Virginia limited liability company
130 Sheridan Lane, Morgantown, West Virginia 26508

(3) Lease Agreement Execution Date: _____, 2015

(4) Description of Leased Premises: A certain hangar containing two thousand seven hundred (2,700) square feet, more or less, located and situate in the Sixth Ward of The City of Morgantown, Morgan District, Monongalia County, West Virginia, at the Morgantown Municipal Airport, as more particularly shown and described on Exhibit A appended and incorporated by this reference, together with all now existing or hereafter-made improvements and all appurtenances belonging thereto.

(5) Initial Term: Three (3) years commencing on February 1, 2015.

(6) Renewal Terms: Three (3) additional terms of three (3) years each, each of which terms shall commence immediately upon the expiration of the initial term, or the immediately preceding term, and shall expire at midnight on the day preceding the third (3rd) anniversary thereof, which additional terms shall automatically occur subject to certain conditions set forth and contained in the Lease Agreement.

(7) Dominance of the Lease Agreement: In the event that a conflict shall exist between the terms and provisions of this Memorandum and the terms and provisions of the Lease Agreement, the terms and provisions of the Lease Agreement shall dominate, control, prevail, and govern.

Signature Page Follows

Witness the following signatures.

RSA Flight Training, LLC,
a West Virginia limited liability company

By: _____
Name: Joe H. Weiss
Title: Manager

By: _____
Name: Bret A. Kennedy
Title: Manager

The City of Morgantown, West Virginia,
a municipal corporation

By: _____
Name: _____
Title: _____

State of West Virginia,
County of Monongalia, to-wit:

The foregoing instrument was executed and acknowledged before me this the _____ day of _____, 2015, by Joe H. Weiss and Bret A. Kennedy, in their capacities as managers of RSA Flight Training, LLC, a West Virginia limited liability company, for and on behalf of such limited liability company, as the act and deed of such limited liability company.

_____
Notary Public
Commission expiration: _____

State of West Virginia,
County of Monongalia, to-wit:

The foregoing instrument was executed and acknowledged before me this the _____ day of _____, 2015, by _____, in his/her capacity as _____ of The City of Morgantown, West Virginia, a municipal corporation, for and on behalf of such corporation, as the act and deed of such corporation.

_____
Notary Public
Commission expiration: _____